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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4004 OF 2022**

Suvarna Kishor Keole

.... Petitioners.

V/s

State of Maharashtra
Through the Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai & Anr.

.... Respondents.

Mr. Anil D'Souza i/b Ernest Tuscano for the Petitioner.

Mr. Mohit Jadhav, Addl. G.P. for Respondent No.1/State.

Mr. Kiran Bapat, Senior Advocate i/b Mr. Aumkar Joshi for Respondent No.2.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE ON WHICH ARGUMENTS WERE HEARD : 01/04/2024

DATE ON WHICH THE ORDER IS PRONOUNCED : 10/04/2024

P.C.:

1] Challenge raised in this writ petition is to the communication dated 18/03/2019 issued by the Department of Law and Justice, Maharashtra State, Mumbai thereby refusing to accept the proposal of the Petitioner for correction of her date of birth in the service records from 15/05/1965 to 26/12/1965.

2] Facts relevant for considering the grievance as raised are that it is the case of the Petitioner that her date of birth is 26/12/1965 as per the birth certificate issued by Nagpur Municipal Corporation. While entering her name in the school records, the same was inadvertently indicated as 15/05/1965. On that basis the Petitioner prosecuted her studies and passed her Secondary School Certificate Examination in March, 1980 wherein her date of birth was indicated as 15/05/1965. On being eligible to enter the Maharashtra Judicial Service, the Petitioner submitted her application form wherein her date of birth was shown as 15/05/1965. On 12/10/2010 the Petitioner was selected as a District Judge and entered service. Within a period of five years from her entry in service, the Petitioner on 07/11/2014 made representation seeking correction in her date of birth as recorded in the service book. It was her case that on account of mistake of the school authorities her date of birth was wrongly recorded in the school records as 15/05/1965 while her correct date of birth was 26/12/1965. This representation was considered by the Department of Law and Justice and on 13/05/2015 it was informed that the request would be required to be considered in accordance with Rule 38(2)(f) of the Maharashtra

Civil Services (Conditions of Service) Rules, 1981 (for short, Rules of 1981). On that basis the Petitioner's request was turned down. The Petitioner made a request for re-consideration of her earlier representation dated 07/11/2014 by stating that there was no overwriting in her date of birth as mentioned in the service book but that entry needed to be corrected as per the birth certificate issued by the Nagpur Municipal Corporation. The Department of Law and Justice sought various documents from the Petitioner which were accordingly supplied. Ultimately on 24/08/2017 the Department of Law and Justice informed the Petitioner that the request as made by her could not be accepted in view of Rule 38(2)(f) of the Rules of 1981.

3] The Petitioner not being satisfied with the aforesaid response made yet another representation on 05/12/2017 stating therein that her date of birth ought to be corrected as requested. On 18/03/2019 the Department of Law and Justice informed the Petitioner that her date of birth in service book was entered on the basis of documents that were supplied by the Petitioner which included her Secondary School Certificate. It was further stated that when the entry in the service book was taken, the Petitioner had countersigned the

documents which indicated that the same was acceptable to her. Hence the request came to be rejected. Being aggrieved, the Petitioner has assailed the said communication dated 18/03/2019 in the present writ petition.

4] Mr. Anil D'Souza, the learned Counsel for the Petitioner referred to the provisions of Rule 38(2)(f) and submitted that since the date of birth as indicated in the Petitioner's school records was incorrect as a result of "an obvious clerical error", it was permissible to make the necessary corrections in her service book under Rule 38(2)(f) of the Rules of 1981. The application for such change having been made within a period of five years from the Petitioner's entry in service coupled with the fact that the Nagpur Municipal Corporation had issued the Petitioner her birth certificate which indicated her date of birth as 26/12/1965 it was clear that the entry made in service book was "an obvious clerical error". Alongwith the representation sufficient material including the date of birth of the Petitioner's siblings had been provided and hence the representation as made ought to have been accepted. By misconstruing the provisions of Rule 38(2)(f) of the Rules of 1981, the Petitioner's request had been turned down thus resulting

in grave prejudice to her legal rights. It was not a case of any unfair advantage being sought to be gained by the Petitioner but it was a case of mere correction of her date of birth. To support his contentions, the learned Counsel referred to the judgment of the Division Bench in Writ Petition No.1643 of 2014 (O.S) [*Virendra Gyansingh Bisht vs State of Maharashtra and Ors.*] decided on 22/04/2015. It was thus urged that on a proper interpretation of Rule 38(2)(f) of the Rules of 1981 alongwith the documents on record it was clear that correction in the date of birth as sought by the Petitioner ought to be permitted.

5] Mr. Kiran Bapat, learned Senior Advocate for the Respondent No.2 opposed the aforesaid submissions. According to him, Rule 38(2)(f) could not be read in the manner as contended by the Petitioner. It was only if there was “an obvious clerical error” while entering the Petitioner’s date of birth in her service book that a request for such correction could be made within five years of commencing service. The Petitioner’s date of birth as indicated in her Secondary School Certificate was 15/05/1965 and this date was entered in her service records. That date was given by the Petitioner herself while entering service. It was only in the year 2014 that the Petitioner sought to

produce her birth certificate indicating her date of birth as 26/12/1965. Since the Petitioner's date of birth in her service record was entered on the basis of documents produced and that date was 15/05/1965, there was no question of there being any clerical error while entering her date of birth. It was then submitted that under instruction 2-A of Rule 38(2)(f) of the Rules of 1981 it was necessary to ensure that if the date of birth was altered, the person concerned should not be found ineligible for admission in school. If the contention of the Petitioner was accepted and her date of birth was treated to be 26/12/1965 then the Petitioner would not have been eligible for admission in Standard-I in June 1970 for the reason that she would not have completed age of five years while seeking such admission. It would indicate that as on 01/06/1970 the Petitioner would have been aged four years and five months which was below the minimum age prescribed for admission under Rule 128 of the Bombay Primary Education Rules, 1949. Reference was also made to the Secondary School Certificate issued to the Petitioner's sister which indicated her date of birth also as 15/05/1965. It was thus submitted that the request of the Petitioner could not be accepted in view of Rule 38(2)(f) of the Rules of 1981 and hence it was rightly rejected. The

learned Senior Advocate referred to the decision of the Supreme Court in State of *Madhya Pradesh and Others vs. Premlal Shrivastava*, (2011) 9 SCC 664 in that regard. It was thus submitted that the writ petition was liable to be dismissed.

6] Having heard the learned Counsel for the parties and having perused the documents on record we are satisfied that the Department of Law and Justice was justified in refusing to accept the request made by the Petitioner for correction of her date of birth under Rule 38(2)(f) of the Rules of 1981. The undisputed facts are that in the Secondary School Certificate issued to the Petitioner, her date of birth has been shown as 15/05/1965. This was the date given by the Petitioner while entering service. In paragraphs 5 and 6 of the affidavit in reply filed on behalf of the Department of Law and Justice it has been stated as under:-

“5. I say and submit that, at the time of entry of the petitioner in the Government service on 12.10.2010, her date of birth has been recorded in her Service book as 15.05.1965 by following the procedure laid down under clause (a) of sub rule (2) of Rule 38 of the said Rules of 1981. It seems that, the said date

of birth has been verified by the concerned authority with reference to the documentary evidence, namely, the original certificate of Age, Nationality and Domicile issued by the Additional District Magistrate, Nagpur. Hereto annexed and marked as **Exhibit-1** is the copy of relevant page in Service book of the petitioner.”

“6. I say and submit that, the same date of birth (i.e. 15.05.1965) of the petitioner is also recorded in other documents, including the School Leaving Certificate, SSC Mark sheet issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur Divisional Board, Nagpur etc. I say that the petitioner has also mentioned the same date of birth i.e. 15/05/1965, in the application form for appointment as District Judge in Judicial Service of the State of Maharashtra.”

7] According to the Petitioner, her correct date of birth is 26/12/1965. However her date of birth in her school records was wrongly stated to be 15/05/1965. This stand has been taken by the Petitioner in her representation dated 07/11/2014. That date has not

yet been got corrected by the Petitioner. As a result, her Secondary School Certificate continues to indicate the date of birth as 15/05/1965. While entering service the Petitioner having relied upon the Secondary School Certificate, the date of birth indicated therein was entered in her service records. It is not the case of the Petitioner that though in the documents submitted by her on entering service her date of birth was shown as 26/12/1965 but while recording the same in her service records it was wrongly shown as 15/05/1965.

8] Rule 38(2)(f) of the Rules of 1981 permits alteration in the entry of the date of birth if the entry is a result of “an obvious clerical error”. Such error should be one made for want of care on the part of some person other than the individual in question or must be shown to be an obvious clerical error for being corrected under Rule 38(2)(f). According to the Petitioner, the entry in the school records as 15/05/1965 is an effect of clerical error and therefore on the strength of her birth certificate, her service records ought to be corrected. As stated above, the entry in the service book having been taken on the basis of the Petitioner’s Secondary School Certificate and there being no difference in date of birth indicated there and in the service records, it

would not be permissible to correct the service book on the basis of her birth certificate especially when same indicates a different date of birth from the one indicated in her Secondary School Certificate. To reiterate, unless the school records of the Petitioner are corrected in accordance with her birth certificate as contended there can be no basis to hold that there has been an error in entering her date of birth in the service records. This is for the reason that on the basis of the Secondary School Certificate the Petitioner's date of birth was entered in the service records.

9] The decision sought to be relied upon in the case of *Virendra Gyansingh Bisht* (supra) is clearly distinguishable on facts for the reason that therein the Law and Justice Department accepted the decision of the High Court on the Administrative side to correct the date of birth. Despite aforesaid, the General Administration Department did not accept the recommendation of the Department of Law and justice but accepted the recommendation of the Finance Department not to correct the date of birth. In that context this Court directed correction of the date of birth in the service records. In the present case, there is no such recommendation by the Department of

Law and Justice and hence ratio of that decision cannot apply to the facts of the present case.

10] For the aforesaid reasons we find that the provisions of Rule 38(2)(f) of the Rules of 1981 do not permit the correction of the date of birth of the Petitioner in her service book as there is no “obvious clerical error” while entering her date of birth as indicated in her Secondary School Certificate in her service records. There is no case made out to interfere in exercise of writ jurisdiction. The Writ Petition is dismissed with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]